

**(1937) 04 AHC CK 0020**

**Allahabad High Court**

**Case No:** None

Shankar Lal

APPELLANT

Vs

Emperor

RESPONDENT

---

**Date of Decision:** April 15, 1937

**Citation:** AIR 1937 All 681

**Final Decision:** Dismissed

---

### **Judgement**

1. This is an appeal against the order of the learned Chief Justice directing the Registrar of the High Court to make a complaint against the applicant in Civil Revision No. 85 of 1935, Shankar Lal, for offences under Sections 193 and 471, I.P.C., to a Magistrate of the First Class having jurisdiction. Shankar Lal was the defendant in a suit filed upon the basis of a promissory note which was executed on 14th October 1928. The suit was filed on 8th February 1934. In his defence, the defendant pleaded that two payments had been made towards the amount due under the promissory-note, one of Rs. 400 on 24th July 1933 and one of Rs. 250 on 8th December 1933. The plaintiff averred that no such payments had been made by the defendant. The defendant supported his averments in regard to these payments by the production of two receipts Ex. A and B, which purport to bear the signatures of the plaintiff. A handwriting expert in the trial Court deposed that the signatures on Ex. A and Ex. B were forgeries. The Small Cause Court Judge who heard the case recorded his opinion as follows:

Handwriting expert reported on 19th December 1934 that the receipts Exs. A and B do not bear signatures of the plaintiff. He was cross-examined but was not shaken a bit. The witnesses of the defendant do not appear to be truthful. Considering all the evidence on the record I hold that Exs. A and B are forged documents and the allegation of the defendant that by means of these two receipts Rs. 650 were paid to the plaintiff is wholly incorrect.

2. Against the order of the Small Cause Court Judge the defendant filed an application in revision. This application came before the learned Chief Justice, who

directed further inquiry in regard to the signature on Ex. A. The handwriting expert furnished a further report and upon a consideration of that report and the entire evidence in the case the learned Chief Justice came to the conclusion that it was expedient in the interest of justice that he should u/s 476, Criminal P.C., direct proceedings against the defendant. He accordingly passed the order above referred to. Learned Counsel for the appellant contended that we should not proceed to dispose of this appeal since the receipt Ex. A was not before us. He maintained that if the receipt were here he would be in a position to satisfy us that there was no foundation for the finding that the signature thereon was a tracing of the admitted signature of the plaintiff. We do not consider that there is any force in his contention. We have to decide whether upon the evidence which was before the learned Chief Justice there was a prima facie case for directing proceedings u/s 476, Criminal P.C. We are satisfied that there was such a prima facie case. There was the evidence of the handwriting expert in the trial Court and there was the report of the same handwriting expert which was furnished to this Court. Furthermore, the learned Chief Justice had the opportunity of comparing the signatures upon the receipt with the admitted signature of the plaintiff. In these circumstances we consider that it is unnecessary to recall the receipt from the Magistrate to whom it appears to have been sent and that we may dispose of this matter.

3. Learned Counsel for the appellant took the plea that this Court has no jurisdiction in an application in civil revision to order proceedings u/s 476 in respect of the alleged offences under Sections 193 and 471, I.P.C. His argument was that inasmuch as the offences alleged, to have been committed have been committed in the Small Cause Court, the only Court which has jurisdiction to direct proceedings under Sections 193 and 471, I.P.C., is the trial Court or the Court of the District Judge in view of the terms of Section 195, Criminal P.C. In support of this contention learned Counsel referred to the provisions of Section 476-A, Criminal P.C. In our opinion there is no force in this argument. Offences under Sections 193 and 471, I. P.C., were no doubt committed in the trial Court, i.e. if Exs. A and B are forgeries. It cannot be contended however that these offences were not committed in this Court when the applicant relied upon Ex. A and Ex. B in his application in civil revision. Section 193 is in the following terms:

193. Whoever intentionally gives false evidence in any stage of a judicial proceeding or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment, etc....

4. Assuming that Ex. A was a forgery, it was relied upon by the applicant in his application in civil revision which is a stage of a judicial proceeding. It cannot be maintained therefore, if Ex. A is a forgery, that the applicant did not commit an offence u/s 193, I.P.C., in this Court. Section 471, I.P.C. is in the following terms:

471. Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the

same manner as if he had forged such document.

5. Clearly, the appellant "used" Ex. A in this Court. Learned Counsel for the appellant contended, as already observed, that in the present instance it was only the Court of the District Judge which could direct proceedings against the applicant in view of the provisions of Section 195(3), Criminal P.C. He referred in this connection to Section 476-A, Criminal P.C. This section he maintained had the effect of restricting the wide terms of Section 476. Clearly Section 476-A was intended only to give the Court power to direct proceedings in respect of an offence which had not been committed in a proceeding before it but which had been committed in a subordinate Court where the subordinate Court had failed to take action u/s 476. The point in issue came for consideration in *Emperor v. Syed Khan* AIR 1925 Rang 321. In that case a Pull Bench of the Court decided that

There was no question that Section 476 gave the High Court, as a superior Court, full powers to lay a complaint in any and every case in which it appeared expedient in the ends of justice so to do, and that there was nothing in the Code to justify the contention that that power and jurisdiction is taken away, because in cases of a complaint or on its refusal to lay a complaint by some subordinate Court, an appeal from that order is allowed.

6. In our judgment the provisions of Section 476, Criminal P.C., are perfectly plain and under this section this Court has jurisdiction to order proceedings thereunder as has been done by the learned Chief Justice when the application in revision came before him for consideration. It has been the practice of this Court in the past to order such proceedings and learned Counsel for the appellant was unable to direct our attention to any case in which the jurisdiction of the Court to order such proceedings had been challenged. During the course of his argument, learned Counsel for the appellant referred to the merits of the case. We do not consider it necessary or expedient to make any pronouncement thereon. In the result, the appeal is dismissed. On the filing of this appeal the Court ordered stay of proceedings. This order is discharged. These proceedings in the circumstances may, although the alleged offence was committed in the High Court of Allahabad, be continued in the Court of the Magistrate to whom complaint has been made pursuant to the order of the learned Chief Justice. We order accordingly.